

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

DANIELLE C. HENDRICKS,

Plaintiff,

-against-

6:23-CV-431 (LEK/ML)

UTICA PUBLIC DEFENDERS, *et al.*,

Defendants.

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**MEMORANDUM-DECISION AND ORDER**

**I. INTRODUCTION**

Plaintiff Danielle Hendricks brings this pro se action pursuant to 42 U.S.C. § 1983 against Utica Public Defenders, Elizabeth, Frank, Judge Sabb (“Sabb”), and the Utica District Attorney (collectively, “Defendants”). Plaintiff alleges that Defendants violated her right to an attorney and provided ineffective assistance of counsel in violation of Plaintiff’s Sixth Amendment rights. See Dkt. No. 1 (“Complaint”) at 2–5. Plaintiff has also filed a motion for leave to proceed in forma pauperis, Dkt. No. 6 (“IFP Application”), and a motion for appointment of counsel, Dkt. No. 8 (“Counsel Motion”). The Honorable Miroslav Lovric, United States Magistrate Judge, issued a report and recommendation regarding the Complaint, IFP Application, and Counsel Motion. Dkt. No. 9 (“Report and Recommendation”). Judge Lovric (1) granted Plaintiff’s IFP Application, (2) denied Plaintiff’s Counsel Motion, and (3) recommended that this Court dismiss the Complaint in its entirety, in part with leave to amend, and in part without leave to amend. See R. & R. at 13.

No party has filed objections to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety.

## II. BACKGROUND

The Court assumes familiarity with Judge Lovric’s Report and Recommendation, as well as with Plaintiff’s factual allegations as detailed therein. See id. at 2.

## III. STANDARD OF REVIEW

“Within fourteen days after being served with a copy [of the Magistrate Judge’s report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of the court.” 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record.”). Clear error “is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed.” Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019). Additionally, a district court will ordinarily refuse to consider an argument that could have been, but was not, presented to the magistrate judge in the first instance. See Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.” (internal quotation marks omitted)). Upon review, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

## IV. DISCUSSION

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court reviews the Report

and Recommendation for clear error. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

**V. CONCLUSION**

Accordingly, it is hereby:

**ORDERED**, that the Report and Recommendation (Dkt. No. 9) is **APPROVED and ADOPTED in its entirety**; and it is further

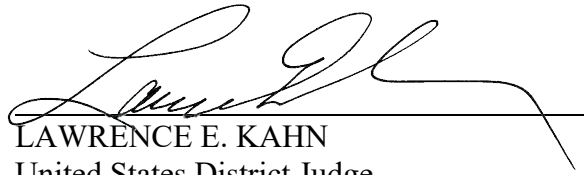
**ORDERED**, that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED without prejudice and without leave to amend** to the extent that it seeks monetary relief from Defendants Sabb and Utica District Attorney, who are immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B); and it is further

**ORDERED**, that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED with leave to amend** to the extent that it (1) seeks declaratory/injunctive relief from Defendants Sabb and Utica District Attorney, and (2) alleges claims pursuant to 42 U.S.C. § 1983 against Defendants Utica Public Defender, Elizabeth, and Frank, for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B). Furthermore, if Plaintiff wishes to file an amended complaint, he must do so within **forty-five (45) days** of this Memorandum-Decision and Order; and it is further

**ORDERED**, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: September 29, 2023  
Albany, New York



LAWRENCE E. KAHN  
United States District Judge